



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

MEMORANDUM

DATE: June 16, 2004
TO: County, City and Township Clerks
FROM: Christopher M. Thomas, Director of Elections
SUBJECT: HAVA Compliance Procedures and Processes

This memo details the procedures and processes which must be carried out on the county and local level to implement the requirements of the Help America Vote Act of 2002 (HAVA). All of the described measures must be implemented at the August 3, 2004 primary. The topics covered in this memo are listed below. Additional information and materials specially developed to help instruct election inspectors on the polling place procedures impacted by HAVA will be supplied in the near future.

- I. Provisional Balloting Process
- II. First-Time Mail Registrants
- III. Voter Registration Forms Revised
- IV. New Public Posting Requirements on Election Day
- V. Registration and Voting Rights of Absent Uniformed Services Voters and Overseas Voters
- VI. Complaint Process

I. Provisional Balloting Process

A new "provisional balloting process" is provided under HAVA to ensure that no voter is improperly denied the opportunity to vote due to an administrative error in handling the voter's registration application. The procedures developed to implement the new federal requirement were enacted under PA 92 of 2004 (SB 432). To implement the provisional balloting process, a new form has been developed. (See enclosed "*Procedure for Issuing a Ballot If Voter's Name Does Not Appear on Registration List: A Four-Step Procedure.*") The new form *replaces* the "Affidavit of Voter Registration" form which has been used since 1995. The new four-step procedure form can be purchased from commercial suppliers or, if preferred, the enclosed prototype of the form can be copied as needed. Several important points follow:

Four-step procedure form: Every action a precinct board must take to carry out the new provisional balloting process is fully described as a part of the four-step procedure form. The careful study of the form is therefore essential to a thorough understanding of the process.

The new provisional balloting process must be employed anytime a voter who completes an Application to Vote form does not appear on the precinct's QVF list. The four-step procedure form must be completed *before* a ballot is issued to the voter. There are two exceptions:

- If the voter is in the proper polling place and is able to produce a voter registration receipt that shows that he or she registered to vote before the registration deadline, there is no need for the precinct board to complete the form. Instead, the precinct board should contact the clerk for assistance if needed and arrange to have the voter complete another registration form. After the voter has completed the registration form, the voter can be permitted to vote under regular procedure.
- If the precinct board or the clerk determines that the voter is registered to vote in a different precinct and the voter is willing to travel to his or her proper polling place, there is no need for the precinct board to complete the form. Instead, the precinct board should give the voter directions to his or her proper polling place. (If the voter declines to travel to his or her proper polling place, the precinct board must complete the form.)

In an instance where the four-step procedure form must be completed before a ballot can be issued to the voter, the precinct board must carefully work through the form and make a final determination on whether the ballot issued to the voter can be handled like any other ballot issued in the polls (i.e., deposited in the precinct's ballot box or tabulator) or must be preserved in a special "provisional ballot security envelope" and returned to the clerk's office for further review after the polls close. The four-step procedure form is designed to guide the precinct board in making this determination. A ballot preserved in a "provisional ballot security envelope" is commonly called an "envelope" ballot. Provisional ballot security envelopes can be purchased through commercial suppliers. (An illustration of the entries which must appear on the provisional ballot security envelope is attached to the enclosed four-step procedure form.)

Actions clerk must take after election: City and township clerks who receive one or more "envelope" ballots after the polls close must evaluate the ballots within 6 days after the election to determine if the ballots can be counted. The four-step procedure form is designed to guide the precinct board on recording all of the information needed by the clerk to determine whether an "envelope" ballot can be counted. The clerk is *not* permitted to open a "provisional ballot security envelope" unless the clerk determines that the ballot can be counted. A procedure for handling "envelope" ballots returned to the clerk's office is enclosed with this memo. (See enclosed "*Procedure for Handling 'Envelope' Ballots Returned to Clerk's Office.*")

No later than the 7th day after the election, the city or township clerk must complete a “Provisional Ballot Report” form and submit it to the county canvassing board or local canvassing board as appropriate. The completion and submission of the form is not required of a city or township clerk who does not receive any “envelope” ballots after the election. (See enclosed “*Provisional Ballot Report*” form.)

“Free access system”: HAVA stipulates that all voters who were issued a provisional ballot must have access to a cost-free informational system (“free access system”) which the voter may use to determine whether his or her ballot counted, and, if the ballot was not counted, the reason why the ballot was not counted. The notice which must be distributed to each voter issued a provisional ballot advises the voter of his or her right to obtain this information.

To ensure compliance with the new requirement, all city and township clerks must be prepared to handle inquiries from voters who were issued “envelope” ballots. When handling such inquiries the clerk has an obligation to advise the voter on whether his or her “envelope” ballot was counted or was not counted. If the voter’s “envelope” ballot was not counted, the clerk is obligated to explain the reason why and the actions the voter can take to ensure that the next time the voter wishes to participate in an election, his or her ballot will count.

In accordance with federal law, PA 92 of 2004 stipulates that the free-access system may be “a telephone number that does not require a toll charge, a toll-free telephone number, an internet website, or a mailed notice.” If a “mailed notice” is employed, the notice must be sent to each and every voter who was issued an “envelope” ballot.

County clerk’s report: PA 92 of 2004 stipulates that the county clerk must submit a “county provisional ballot report” to the Secretary of State within 14 days after the election. The Bureau of Elections will supply Michigan’s county clerks with forms and instructions for compiling and submitting the required data.

II. First-Time Mail Registrants

PA 92 of 2004 modified the “voting in person” requirement currently imposed under Michigan election law on first-time mail registrants. At the same time, HAVA imposes a new identification requirement on first-time mail registrants. The change in Michigan election law and the new federal ID requirement are explained below:

“Voting-in-person” requirement: With the new amendment, a voter *who has never voted in Michigan* who chooses to register by mail, must appear in person to vote in the first election in which he or she wishes to participate. Previously, the restriction applied to mail registrants who had never voted in person in the city or township in which they were applying to register to vote. With the change, a voter subject to the “voting-in-person” requirement who satisfies the requirement – and who then moves to a different jurisdiction in the state and again chooses to register to vote by mail – is *not* required to satisfy the “voting-in-person” requirement a second time. As is currently the case, the “voting-in-person” requirement does not apply if:

- 1) the voter hand delivers his or her mail registration form to the county or local clerk's office;
- 2) the voter is 60 years of age or more;
- 3) the voter is disabled; or
- 4) the voter is eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act.

New federal ID requirement: HAVA stipulates that a voter *who has never voted in Michigan* who chooses to register by mail, must meet a new identification requirement. To comply with the identification requirement, the voter must:

- 1) accurately enter his or her state issued driver license number or personal ID number where requested on the mail-in voter registration form; or
- 2) send one of the following forms of identification when mailing the mail-in voter registration form to his or her county or local clerk: a copy of a current and valid photo identification (such as driver's license or personal ID card) or a copy of a paycheck stub, utility bill, bank statement or a government document which lists his or her name and address.

If a voter subject to the new federal ID requirement does not meet the requirement as explained above, the voter must present an acceptable form of identification before voting in the first election in which he or she wishes to participate. The new federal ID requirement does not apply if:

- 1) the voter hand delivers his or her mail registration form to the county or local clerk's office;
- 2) the voter is disabled; or
- 3) the voter is eligible to vote under the Uniform and Overseas Citizens Absentee Voting Act.

Implementation points: The following implementation points merit close attention:

- The Qualified Voter File is in the process of being upgraded to assist Michigan's city and township clerks administer the "voting-in-person" and federal ID requirement. With the upgrade, the QVF will identify those voters subject to the "voting-in-person" requirement, those voters subject to the new federal ID requirement and those voters who are subject to both requirements. Further information on the upgrade will be supplied to all county, city and township clerks in the near future.
- A voter who is subject to the federal ID requirement who is unable or unwilling to produce an acceptable form of ID must be issued a "provisional" ballot. When

issuing a “provisional” ballot to such a voter, it must be preserved as an “envelope” ballot. In an instance where an “envelope” ballot must be issued to a voter subject to the federal ID requirement, it is *not* necessary to complete the four-step procedure form. It merits note, however, that a special notice must be issued to the voter at the time the “envelope” ballot is issued. (See enclosed “*Notice to Voters Subject to Federal Identification Requirement.*”)

- It merits final observation that in an instance where a 1) a voter who is 60 years of age or more requests an AV ballot 2) the voter is subject to the federal ID requirement because he or she is a first-time mail registrant who has never voted in Michigan and 3) the voter has not cleared the ID requirement prior to requesting the ballot, a provisional ballot must be issued to the voter by mail. Upon the return of the ballot, it must be preserved and handled as an “envelope” ballot. While such an occurrence will be rare, it is notable as this is the only instance where an *absentee voter* would be required to vote a provisional ballot.

III. Voter Registration Forms Revised

New notices provided on mail-in forms: To ensure that voters are fully aware of the “voting-in-person” requirement and the new federal ID requirement, Michigan’s Mail-In Voter Registration Application form is in the process of being revised to include special notices on the requirement. (See enclosed sample of the revised registration form.) As the “agency-based” voter registration forms in use in the state are also designed for submission by mail, similar notices are being added to the agency-based registration forms.

New question provided on registration forms: As an additional requirement, HAVA stipulates that the following two questions must be added to all voter registration forms with “yes” and “no” checkoff boxes: 1.) “Are you a citizen of the United States of America?” and 2.) “Will you be 18 years of age on or before Election Day?” HAVA further stipulates that the following statement must be provided after the questions: “If you checked ‘no’ in response to either of these questions, do not complete this form.”

In an instance where a voter registration applicant fails to answer the citizenship question, the city or township clerk must notify the applicant and provide him or her an opportunity to complete the form no later than the voter registration deadline for the next federal election. The voter registration application cannot be accepted unless and until the voter registration applicant affirmatively answers the citizenship question.

Prior to the new HAVA requirement, a citizenship question was added to Michigan’s voter registration forms to highlight the need to be a U.S. citizen in order to register and vote. However, as the question was administratively placed on the form, a voter who failed to respond to the question was nevertheless placed on the registration rolls if he or she signed the attestation statement on the form. With the new HAVA requirement, this allowance is now eliminated.

IV. New Public Posting Requirements on Election Day

Both HAVA and a new amendment to Michigan election law (PA 96 of 2004) expand the information that must be posted in the polls on election day. With the new posting requirements, the Secretary of State is now required to supply signage for display in the polls that addresses the following:

- The hours that the polls will be open.
- Voting instructions.
- Information on an individual's right to obtain a provisional ballot and instructions on how to vote a provisional ballot.
- Information on the identification requirements that apply to voters who register by mail.
- Instructions on how to contact the appropriate election official about alleged voting rights violations.
- Information on the federal and state laws that prohibit fraud and misrepresentation.
- Information on how to challenge another voter as unqualified to vote.
- Other information that the Secretary of State considers necessary.

HAVA further stipulates that a sample ballot must be posted in the polls.

The new posting requirements must be observed for every election conducted in the state. The Secretary of State will supply every city and township with reusable signage that complies with the new posting requirements in advance of the August 3 primary.

V. Registration and Voting Rights of Absent Uniformed Services Voters and Overseas Voters

HAVA effects a number of changes in the laws which govern the registration and voting rights of absent uniformed services voters and overseas voters. The changes which impact the procedures and processes observed by Michigan's city and township clerks are described below:

Modified oath required on absent voter ballot return envelopes used by absent uniformed services voters and absentee voters: HAVA requires the Federal Voting Assistance Program office to prescribe a "standard oath" for use with any document submitted by voters under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). In conformance with the requirement, the Federal Voting Assistance Program Office has prescribed the following oath:

I swear or affirm under penalty of perjury, that I am:

1. A member of the Uniformed Services or merchant marine on active duty; or an eligible spouse or dependent of such a member; or,
A U.S. citizen temporarily residing outside the U.S.; or,
Other U.S. citizen residing outside the U.S.; and
2. I am a U.S. citizen, at least 18 years of age (or will be by the date of the election), and I am eligible to vote in the requested jurisdiction;
and
3. I have not been convicted of a felony, or other disqualifying offense, or been adjudicated mentally incompetent, or, if so, my voting rights have been reinstated; and
4. I am not registered, requesting a ballot, or voting in any other jurisdiction in the U.S., except the jurisdiction cited in this voting form.

In voting, I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under State or Federal law. I have not been influenced.

My signature and date below indicate when I completed this document.

The information on this form is true, accurate, and complete to the best of my knowledge. I understand that a material misstatement of fact in completion of this document may constitute grounds for a conviction of perjury.

Signed: _____ Date: _____
Month/Day/Year

The newly prescribed oath must be used in place of the oath prescribed under Michigan election law when sending an absent voter ballot to an absent uniformed services voter or overseas voter. The oath can be placed on the absent voter ballot return envelope with a sticker if necessary. The newly prescribed oath does *not* replace the wording of the affidavit which must be submitted by Michigan citizens who are temporarily living or traveling outside of the territorial limits of the United States (“Affidavit for Persons Temporarily Residing Outside of the United States”).

75-day restriction on requesting an absentee ballot eliminated for absent uniformed services voters and absentee voters: HAVA prohibits the imposition of any restriction on the early submission of absentee ballot requests for federal elections by absent uniformed services voters. With the new HAVA stipulation, city and township clerks are no longer permitted to reject absent voter ballot requests submitted for federal elections by absent uniformed services voters more than 75 days prior to the election.

Absent voter ballot requests submitted on Federal Post Card Application (FPCA) forms must be honored for two election cycles: HAVA stipulates that a Federal Post Card Application (FPCA) used to request absent voter ballots must be honored “through the next 2 regularly scheduled general elections for Federal office....” As a consequence, an FPCA form submitted prior to the August 3, 2004 primary must be honored for the August 3, 2004 primary; the November 2, 2004 general election; the August 8, 2006 primary; and the November 7, 2006 general election.

As the new HAVA stipulation only impacts elections involving federal offices, an absent uniformed services voter or overseas voter who wishes to participate in a local election must submit additional absentee ballot requests for the local elections of interest.

New report required: HAVA requires each state to submit a report to the Election Assistance Commission (EAC) no later than 90 days after each Federal election which provides the number of absent voter ballots issued to absent uniformed services voters and overseas voters and the number of absent voter ballots “returned by such voters and cast in the election.” The Bureau of Elections will supply Michigan’s county, city and township clerks with forms and instructions for compiling and submitting the required data.

Rejection notification required: HAVA requires local election officials to provide return notification in any instance where a voter registration application or absent voter ballot application submitted by an absent uniformed services voter or an overseas voter is rejected. The notification can be issued by any convenient means (letter, fax or email).

VI. Complaint Process

HAVA stipulates that each state must adopt a “uniform, nondiscriminatory state-based administrative complaint procedure” for federal elections. In conformance with the new federal requirement, a HAVA-complaint complaint process has been developed and adopted by the Department of State.

The complaint process permits a person who believes that an election authority has violated or will violate a provision of Title III of the Help America Vote Act to invoke a formal investigation by submitting a sworn statement to the Bureau of Elections. The statement must specify the election authority who is alleged to have violated Title III, the provision of Title III involved, how the violation is alleged to have occurred and whether the complainant personally witnessed or possesses first-hand knowledge of the alleged violation. The complainant may request the conduct of a hearing on the matter. If the complaint is valid and a hearing is requested, the Bureau of Elections is required to proceed with the conduct of a hearing on the record.

The complaint process further directs the Bureau of Elections to resolve any formal complaints it receives within 90 calendar days unless the complainant consents to an extension. If the Bureau of Elections determines that a violation of Title III occurred, it is authorized to order an appropriate remedy. If the Bureau of Elections is unable to render a final determination within 90 calendar days, it is required to forward the record to the

Department's Legal and Regulatory Services Administration for alternative dispute resolution. Upon the receipt of a referred complaint, the Legal and Regulatory Services Administration is required to conduct a review of the complaint and render a final determination within 60 calendar days. If the Legal and Regulatory Services Administration determines that a violation of Title III occurred, it is authorized to order an appropriate remedy. In such an instance, the Bureau of Elections is authorized to enforce any remedies ordered by the Legal and Regulatory Services Administration.

A copy of the complaint process is provided on the Secretary of State's web site (www.Michigan.gov/sos). (See Appendix of Michigan's "State Plan.")

Enclosures

- A. Procedure for Issuing a Ballot If Voter's Name Does Not Appear on Registration List: A Four-step Procedure
- B. Procedure for Handling "Envelope" Ballots Returned to Clerk's Office
- C. Provisional Ballot Report Form
- D. Notice to Voters Subject to Federal Identification Requirement
- E. Revised Mail-In Voter Registration Application Form

Questions?

Please do not hesitate to contact this office if you have any questions. Phone: (517) 373-2540.